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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,012	03/22/2001	Stefan Besling	US018029	5187

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EXAMINER

HESS, DANIEL A

ART UNIT PAPER NUMBER

2876

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/816,012	BESLING ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Daniel A Hess	2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 August 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 31-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This action is in response to an 8/24/2004 amendment, which has been placed in the file of record.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 31-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuttle (Us 6,509,829) in view of Stutz, "Your Vacation Plans for Sale?" Wired News, posted online July 9, 1998.

Re claims 31: Tuttle teaches (see for example column 16, lines 15-40) an electronic boarding pass (column 16, line 36) which conveys both a confirmation number (column 16, lines 27-28) and a frequent flyer number (column 16, line 17). The card (column 16, lines 15-40) communicates wirelessly with the reservation and tracking system.

As has been discussed in prior actions, the nature of frequent flyer programs, which Tuttle's system clearly interacts with through by conveying the frequent flyer number, is to collect travel data for each user.

Tuttle fails to teach or suggest bundling the data for sale and selling the data.

Stutz discusses a plan (entire document; notably page 1, 2<sup>nd</sup> paragraph) in which passenger data is collected for sale to direct marketers. As described, this data includes travel

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itineraries and passenger information, which is just the sort of thing that a frequent flier tracking system could collect. Although not explicitly stated, sale of this data would naturally subsidize the transportation system, revenue comes from a source other than ticket sales.

In view of Stutz, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known sales of travel data gathered because this can increase revenue for airlines, and benefit direct marketers who would sell to travelers.

Re claims 32-34, 36-38, 40: By definition, frequent flier programs meet these limitations.

Re claim 35: It has been known for years to mine data to achieve useful demographic profiling for marketing purposes. This has been done with the various data collected each decade by the US Census. The motive has been greater marketing success.

Re claim 39, 41: It is clear in Stutz (page 1, 2<sup>nd</sup> paragraph) that the direct marketers buying the data would do business in areas traveled by the fliers; otherwise what purpose would data on 'travel itineraries' serve?

Re claim 42: See claim 31. Also, regarding the limitation of 'managing the transportation system based on these statistical reports,' frequent flier programs can and are commonly used to fill airplanes. How is this done? Frequent fliers are given benefits on certain flights but not others.

Re claim 43-49: By definition, frequent flier programs meet these limitations.

Re claim 50: It is known frequent fliers programs have certain days they are not allowed to use their miles. This is a determination of the impact that the travelers would have of traffic

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flow, and then using the program to modify traveler's behavior, i.e. modify transportation services based on traffic flow.

***Response to Amendment***

The applicant has argued that since a frequent flier card previously employed does not involving electronic communication in gaining access, the Instant Application should be allowed. Tuttle (US 6,509,829) as discussed above (column 16, lines 20-40 are exemplary) teaches a card having frequent flier info and performing the above, and is employed in an obvious-type rejection, as shown above.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel A Hess whose telephone number is (571) 272-2392. The examiner can normally be reached on 8:00 AM - 5:00 PM M-F.

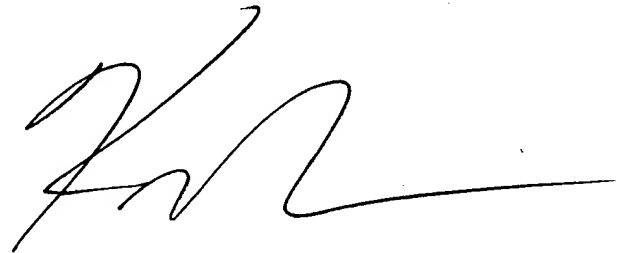
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DH



KARL D. FRECH  
PRIMARY EXAMINER